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Washington, D.C. 20505

11 MAY 1978

White House

Honorable Walter F. Mondale
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

This letter transmits for the consideration of the Congress a draft bill to amend the Central Intelligence Agency Act of 1949, as amended, "To authorize personnel of the Central Intelligence Agency to carry firearms under certain circumstances."

In furtherance of the Central Intelligence Agency's foreign intelligence mission and in aid of the Director of Central Intelligence's statutory duty to protect intelligence sources and methods, the Agency's Office of Security is responsible for insuring proper security of Agency facilities, personnel and information. The Agency now faces a problem concerning delineation of the circumstances under which its security officers may carry firearms within the United States in performing these protective functions, which frequently involve the need to maintain the confidentiality of Agency involvement.

Section 5(d) of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403 f(d)), provides only that Agency "couriers and guards" are authorized to carry firearms "when engaged in transportation of confidential documents and materials." There are other circumstances where it is necessary for Agency personnel to carry firearms if intelligence facilities, personnel and information are to be adequately protected against physical threats. While the number of circumstances in which Agency personnel need authority to carry and use firearms, and which are not clearly covered by the present statutory authority, is not great, those that do exist are extremely important. For example, the CIA operates a small number of training and other facilities that, for reasons of security, cannot be openly identified with the CIA; without the security provided through the use of armed guards, these facilities would be particularly vulnerable to physical harm. Use of armed guards for such purposes is nowhere specifically prohibited by statute; nor does the legislative history on the proviso, "[T]hat the Agency shall have no police, subpoena, law enforcement powers, or internal-security functions..." in section 102(d)(3) of the National Security Act of 1947, as amended (50 U.S.C. 403(d)(3)), militate against the Agency's utilization of armed guards at CIA covert installations. However, there is no explicit authorization for the Agency to protect its facilities,

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personnel and information by arming its security personnel with firearms. Therefore, we believe legislative clarification of the Agency's authority in this area is necessary to resolve issues relating to the scope of authority of Agency personnel who may be forced to use firearms, and thereby risk exposure to possible civil or criminal liability, or both.

The draft bill would permit the Director of Central Intelligence to authorize qualified Agency personnel to carry firearms in the United States only for four purposes. First, the Director may authorize personnel to carry firearms when safeguarding confidential documents or materials. This essentially corresponds with existing law, although the draft bill allows for the protection of documents and materials which are not in the process of being transported. Second, personnel may be authorized to carry firearms for the protection of Agency facilities, property, and mediums of exchange. This may be necessary, for example, to guard against the physical penetration of a sensitive Agency facility within the United States. Such authority also may be necessary, for example, to protect large amounts of cash intended for confidential operational purposes which therefore must be transported within the United States under secure cover procedures. Third, Agency personnel may be authorized to carry firearms to protect, in certain circumstances, Agency personnel, who are exposed to risks of physical harm, including among other things, terrorization, abduction or even assassination. Finally, personnel may be authorized to carry firearms to protect against physical threats to foreign individuals such as defectors and foreign persons visiting the United States under Agency auspices. This may be necessary to prevent the assassination, terrorization, or abduction of defectors or sensitive foreign guests. The draft bill also permits the use of firearms for authorized training purposes.

There are, of course, many precedents for authorizing designated personnel in non-law enforcement agencies to carry firearms for protective purposes associated with agency functions. Under 22 U.S.C. 2666, for example, the Secretary of State may authorize security officers to carry firearms for protecting distinguished visitors to the United States, the Secretary of State, and other persons. There are examples of even broader statutory authorities. Under 10 U.S.C. 1585, the Secretary of Defense may authorize civilian officers and employees of the Department of Defense to carry firearms or other weapons, while assigned investigative or other duties the Secretary may prescribe. 42 U.S.C. 2456 authorizes the Administrator of the National Aeronautics and Space Administration to "direct such of the officers and employees of the Administration if he deems necessary in the public interest to carry firearms while in the conduct of their official duties." 42 U.S.C. 2201 provides that the Atomic Energy Commission "is authorized to authorize such of its members, officers, and employees as it deems necessary in the interest of the common defense and security to carry firearms while in the discharge of their official duties." The circumstances under which the draft bill would permit Agency personnel to carry firearms are more narrowly defined than in some of these statutes.

We would appreciate early and favorable consideration of the proposed bill. The Office of Management and Budget has advised that there is no objection to presenting the proposed bill to the Congress from the standpoint of the Administration's program.

Yours sincerely,

SIGNED

STANSFIELD TURNER

Enclosures

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OLC: m (3 May 78)

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A BILL

To authorize personnel of the Central Intelligence Agency to carry firearms under certain circumstances.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That Section 5(d) of the Central Intelligence Agency Act of 1949, as amended, (50 U.S.C. 403f(d)) is amended to read as follows:

"(d) Authorize, under such regulations as the Director shall prescribe, Agency personnel, while in the discharge of their official duties, to carry firearms; Provided, however: That within the United States, such official duties shall include only the protection of (i) information concerning intelligence sources and methods and classified intelligence documents and material; (ii) facilities, property, and any medium of exchange owned or utilized by the Agency; (iii) the Director and the Deputy Director and other Agency personnel as may be designated by the Director, such designations to be made only upon determination of the Director or Deputy Director that a specific stated exigency warrants such protective action and to be terminated, unless sooner renewed in the same fashion, upon expiration of the exigency or as specified in the designation order or at the end of 120 days, whichever is sooner; and (iv) defectors and foreign persons visiting the United States under Agency auspices; and Provided further, That such duties shall include the transportation and utilization of firearms for authorized training;"

SECTIONAL ANALYSIS AND EXPLANATION

The draft bill would amend Section 5(d) of the Central Intelligence Agency Act of 1949, as amended, in furtherance of the Agency's foreign intelligence mission, and in order further to implement the duty of the Director of Central Intelligence, under the National Security Act of 1947, as amended, to protect intelligence sources and methods from unauthorized disclosure. Section 5(d) now provides that Agency "couriers and guards" are authorized to carry firearms "when engaged in transportation of confidential documents and materials." The draft bill would authorize, under such regulations as the Director of Central Intelligence prescribed, Agency personnel to carry firearms; within the United States, such authority would be limited to certain defined circumstances for the purpose of protecting intelligence information, personnel, facilities and operations. Agency personnel, designated by the Director of Central Intelligence and qualified for the use of firearms, would be authorized to carry firearms within the United States to protect (i) information concerning intelligence sources and methods and classified intelligence documents and material; (ii) facilities, property and any medium of exchange owned or utilized by the Agency; (iii) the Director and the Deputy Director and other Agency personnel as may be designated by the Director, such designations to be made only upon determination of the Director or Deputy Director that a specific stated exigency warrants such protective action and to be terminated, unless sooner renewed in the same fashion, upon expiration of the exigency or as specified in the designation order or at the end of 120 days, whichever is sooner; and (iv) defectors and foreign persons visiting the United States under Agency auspices. In addition, the bill would allow Agency personnel to transport and utilize firearms for authorized training.

CHANGES IN EXISTING LAW

Changes in existing law made by the draft bill are shown as follows: existing law in which no change is proposed is shown in roman; existing law proposed to be omitted is enclosed in brackets; and new matter is underscored.

CENTRAL INTELLIGENCE AGENCY ACT OF 1949, As Amended (50 U.S.C.A. 403a-j)

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GENERAL AUTHORITIES

SEC. 5. In the performance of its functions, the Central Intelligence Agency is authorized to--

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(d) Authorize [couriers and guards designated by the Director to carry firearms when engaged in transportation of confidential documents and materials affecting the national defense and security;] , under such regulations as the Director shall prescribe, Agency personnel, while in the discharge of their official duties, to carry firearms; Provided, however: That within the United States, such official duties shall include only the protection of (i) information concerning intelligence sources and methods and classified intelligence documents and material; (ii) facilities, property and any medium of exchange owned or utilized by the Agency; (iii) the Director and the Deputy Director and other Agency personnel as may be designated by the Director, such designations to be made only upon determination of the Director or Deputy Director that a specific stated exigency warrants such protective action and to be terminated, unless sooner renewed in the same fashion, upon expiration of the exigency or as specified in the designation order or at the end of 120 days, whichever is sooner; and (iv) defectors and foreign persons visiting the United States under Agency auspices; and Provided further, That such duties shall include the transportation and utilization of firearms for authorized training;

COST ANALYSIS

This legislation does not involve any measurable costs. No additional expenditures on firearms or on training are contemplated beyond existing levels.